

To the task force:

Here are my thoughts on ways we could improve the “public meetings” portion of the document. Included below are specific revisions to language (additions underlined; deletions crossed out), as well as the **big picture reasons** behind my suggestions. Thanks for taking a look. Susan.

Part 1

Purpose and Definitions

1.1 Purpose

[Purpose to come later. The definitions have been moved into this part because they will apply to all of the provisions of the ordinance, not just the open meetings provisions.]

1.2. Definitions

The following definitions used in this chapter have the meanings set forth below.

Big picture reason for rearranging the order: For ease of use by normal people (not just the lawyers!), the order should be alphabetical.

1.2.010 Agenda packet

“Agenda packet” means agendas of meetings and any other documents that have been or are intended to be distributed to all or a majority of the members of a policy body or an ancillary body in connection with a matter anticipated for discussion or consideration at a public meeting. The agenda packet must include, without limitation, the following:

- A. Any contract, agreement, letter of intent, or memorandum of understanding, including any amendment or modification thereto, that may be entered into by the City as the result of action by the policy body.
- B. To the extent in they exist at the time the agenda is posted, any memoranda prepared by a member of the policy body, City staff, or Council staff pertaining to a matter to be considered by the policy body at the meeting.

- C. The report of any outside consultant, advisor, contractor, or attorney that will or may be considered by the policy body in taking action on any item on the agenda for the meeting.

However, the agenda packet need not include any material exempt from public disclosure under this Chapter.

Big picture reason for adding a definition of agenda packets: A major concern of neighborhood associations and the public is that documents vital to understanding proposed actions are not available until just before or even at the meeting at which the action will be taken. The City Council and other policy bodies have frequently been criticized for not providing such documents in advance, and members of the City Council themselves have complained about this problem. Having agenda packets available well in advance of meetings is critical, as is ensuring that agenda packets include the necessary documents. Agenda packets are defined here; the section regarding making them public prior to meetings is included below.

1.2.020 Ancillary body

“Ancillary body” means:

- A. Committees or other bodies created by the Mayor, a City Councilmember, the Mayor’s Chief of Staff or the Mayor’s Budget and Policy Director, a policy body, or a Department head, that meets regularly to advise on to provide advice on fiscal, economic or policy issues.¹

Big picture reason for adding the above language: Department heads, such as the City Manager, City Auditor, and City Attorney, are responsible for much of the policy formation and virtually all of the actual policy implementation and operations of the City. It is important that meetings of bodies they may establish to provide input on policy formation and implementation are open the public. Presumably, the omission of bodies created by a policy body was inadvertent. The revised language is closer to the San Francisco ordinance.

Big picture reason for the above deletions: This section also should cover bodies that don’t meet regularly. Just because they don’t meet regularly doesn’t mean they don’t do important business – and if the definition is restricted to bodies that meet regularly, officials could use it to evade the ordinance simply by deciding not to meet regularly.

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- B. Any group assigned by a policy body, ~~or the Mayor, a City Councilmember, or a Department head~~ to meet with residents or community groups to obtain information that would result in a report or recommendation from the group ~~back to the policy body or the Mayor for action by the policy body or the Mayor to the City.~~²

Big picture reason for above changes: City Council members and department heads should be included. For example, Council members may establish neighborhood groups to provide input on City policy, practices, or reforms -- such as the Cortese neighborhood committees. Meetings of such bodies should be open to the public. The language is also revised to make it simpler, and to make the definition applicable even if the group reports back to someone other than the official or policy body that created it.

- C. To the extent not inconsistent with state or federal law, any entity that owns, operates or manages any property in which the City or City Redevelopment Agency has or will have an ownership interest, including a mortgage, and on which property the entity performs a governmental function or service. To the extent not inconsistent with state or federal law, any contract with or grant to such an entity must include a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government-related activities, or performance under the contract or grant, be conducted as provided in accordance with the provisions of this Chapter governing ancillary bodies. Records made available to the governing board of any such entity relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board.

Big picture reason to add above language: We need to include requirement that private entities that contract with the government to perform a governmental function or service also have to abide by the ordinance.

- D. Ancillary body does not include any committee or body ~~consisting solely of City staff~~ that consists solely of City staff, and that is not reviewing, developing, modifying or creating City policies.³

Big picture reason to add above language: The definition of “ancillary body” should include staff committees that are involved in policy formation.

1.2.030 **City**

“City” means the City of San José, California.

1.2.040 **City staff**

“City staff” means all employees of ~~Charter appointees~~ Department Heads.

1.2.050 **Council staff**

“Council staff” means all employees of the City Council and the Mayor.

1.2.060 **Department head**

Department head means the official with primary responsibility for the operations of any department, division, office, or agency of the City.

Big picture reason to add language above: Department heads perform vital functions in the formation and execution of City policy, so any bodies they create need to be included in the ordinance. The term is defined here; the requirements are below.

1.2.050 **Policy body**

“Policy body” means:

- A. The City Council, the Board of the City Redevelopment Agency, the City Financing Authority, and all ~~commissions, committees, boards~~ or other bodies of the City Council or the City Redevelopment Agency, whether permanent or temporary, decision making or advisory, ~~created by charter, ordinance, resolution or other formal action of the City Council or Board of the City Redevelopment Agency.~~

Big picture reason to change this language: Staff revised this section to track the Brown Act, which is already law and we do not need to duplicate. Also, this definition, as written, is too narrow. It is restricted to boards or committees OF the City Council or Redevelopment Agency. Most City boards and commissions are not made up of members of the council or RDA. This definition proposed by staff would omit the Planning Commission, among others. It would also omit bodies established under the city’s charter, such as the Council Salary Setting Commission. It also would leave out the City Financing Authority, which is responsible for City bonds.

- B. All boards and commissions enumerated in the City Charter.
- C. All commissions, boards, committees, or other bodies created by charter, ordinance, resolution or other formal action of the City Council, the Board of the City Redevelopment Agency, or the City Financing Authority.
- D. Committees comprised of City council staff that constitute a quorum of the City Council.⁴
- E. A board or other multimember body that governs a private corporation, limited liability company, or other entity that either:⁵
 - 1. Is created in order to exercise authority of the City government delegated by a policy body to the private corporation, limited liability company, or other entity; or
 - 2. Exists exclusively or primarily to exercise authority of the City government delegated by a policy body to the private corporation, limited liability company, or other entity; or
 - 3. Receives funds from the City and has on its governing body a member of a policy body of the City appointed to that governing body by the policy body of the City.

Big picture reason to add this language: City staff omitted this provision, which ensures that meetings of nominally private entities -- such as non-profits contracted by the City to provide certain City programs – be covered by the ordinance. Such arrangements are consistent with the Brown Act and are included in the San Francisco ordinance.

1.2.060 Meetings

“Meeting” means:

- A. A congregation of a majority of the members of a policy body at the same time and place to discuss or deliberate any matter that is within the jurisdiction of the City. A meal gathering of a policy body before, during or after a meeting of the policy body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion. Such meetings shall not be conducted in restaurants or other locations where public access is possible only by making a purchase or some other payment.

- B. A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of the members of the policy body has become involved in such gatherings.

Big picture reason to add this language: Staff omitted a key provision from the previous draft, designed to prevent one of the most common devices used to get around the Brown Act – a series of meetings involving less than a quorum, to discuss or debate topics that are supposed to be the subject of open meetings. This language makes sure to specifically prohibit that and is needed because of lack of clarity otherwise.

- C. Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of a policy body to develop a collective concurrence as to action to be taken on any item by the members of a policy body is prohibited.
- D. Meeting does not include:
1. Individual contacts or conversations between a member of a policy body and another person that do not convey to the member of the policy body the views or positions of other members of the policy body upon the subject matter of the contact or conversation and in which the member of the policy body does not solicit or encourage the restatement of the views of the other members of the policy body.
 2. The attendance of a majority of the members of a policy body at a regional, state or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members of a policy body do not discuss any item within the subject matter jurisdiction of the ~~policy body~~ City.
 3. The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion, provided that a majority of the members do not discuss any item within the subject matter jurisdiction of the ~~policy body~~ City.
 4. The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of the policy body, provided that the members of the policy body who are not members of the standing committee attend only as observers or as members of the public.

Part 2

Public Meetings

2.1 Meetings to be Open and Public: ~~Application of Brown Act~~

All meetings of any policy body must be open and public and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this chapter. In case of inconsistent requirements under the Brown Act and this chapter, the requirement, which would result in greater or more expedited public access, will apply.

2.2 Time and Place for Meetings

2.2.010 Policy Bodies

- A. Each policy body, except for advisory bodies that do not meet regularly, must establish, by whatever rule is required for the conduct of business by that body, the time and place for holding regular meetings. The time and place of regular meetings shall be posted on the City's public access web site.

Big picture reason to add the word “advisory”: Written without the word “advisory,” all policy bodies that do not meet regularly are exempt. That means to get around this ordinance, all a policy body would have to do is to meet irregularly. We should greatly narrow that loophole by allowing this to apply only to “advisory” bodies.

- B. If a regular meeting would otherwise fall on a holiday, it will instead be held on the next business day, unless otherwise rescheduled in advance. If a meeting must be canceled, continued or rescheduled for any reason, notice of such change must be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in Section 2.____.
- C. All ~~regular and special~~ meetings of policy bodies must be held within the City of San José unless:
 - 1. Otherwise required by state or federal law or court order.
 - 2. It is necessary to inspect real property or personal property which cannot be brought conveniently within the territory of the City of San José.
 - 3. It is necessary to meet with residents residing on property outside of the jurisdiction of the City but owned by the City or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents.

- D. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Section_____. Reasonable attempts must be made to contact others about the change in meeting location.

2.2.020 Ancillary Bodies

- A. If an ancillary body elects to hold regular meetings, it must establish, by whatever rule is used by that body for the conduct of its business, the time and place for holding such regular meetings. The time and place of regular meetings shall be posted on the City's public access web site.
- B. All meetings of ancillary bodies must be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur. The meetings need not be conducted in any particular space for the accommodation of members of the public, although members of the public must be permitted to observe, consistent with legal and practical restrictions on occupancy.

2.3 Notice and Agenda Requirements

2.3.010 Policy Bodies

A. Agenda Posting

1. Each policy body must designate posting locations for notices and agendas required by this chapter. At a minimum, each policy body must post notices and agendas at a place that is freely accessible to members of the public 24 hours per day and on the City's public access website.
2. At least 10 calendar days before a regular meeting, a policy body must post an agenda for the meeting. ~~The agenda must identify the policy body conducting the meeting, specify the time and location of the meeting, contain a meaningful description of each item of business to be transacted or discussed at the meeting, and specify the proposed action for each item or state that the item is for discussion only. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be concise and written in plain, easily understood~~

~~English and must identify all documents that will be provided to the policy body in connection with an agenda item.~~⁶

Big picture reason behind deletions above: The stricken text has been moved to the section on agenda requirements. It fits more logically in that section.

3. Notice of meetings of policy bodies, and a copy of the agenda for such meetings, must be provided by mail, email, or facsimile to each person who has made a written request for notice of such meetings.

B. Agenda Packets, Staff Reports and Policy Body Memoranda

1. ~~All staff reports and other supporting documents~~ Agenda packets related to the items on the agenda for a regular meeting must be posted on the City's public access website ~~or~~ and available in the Office of the City Clerk, and must be made available for inspection and copying at least 10 calendar days before ~~a regular~~ the meeting. If a document required to be included in the agenda packet cannot feasibly be posted on the City's public access website, a description of that document must be included in the agenda and the document must be made available for inspection and copying in the Office of the City Clerk at least 10 calendar days before the meeting.

Big picture reason for additions above: Agenda packets are crucial to informed public participation in meetings. Every possible effort must be made to include all documents related to an agenda item in the agenda packet, and to make the agenda packets public as far in advance of the meetings as possible. The term "agenda packet" is now defined in Part I of this ordinance.

2. For items of business to be transacted or discussed at a regular meeting ~~is for involving~~ an expenditure of \$1 million or more, ~~in which case the staff reports and other supporting documents~~ agenda packets must be posted on the City's public access website and must be made available for inspection and copying in the Office of the City Clerk at least 14 calendar days before ~~a regular~~ the meeting.
 3. In the event that any staff reports ~~and or~~ other ~~supporting~~ documents related to any items on the agenda for a regular meeting
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~~are~~ is not posted on the City's public access website and made available for inspection in the Office of the City Clerk and copying at least 6 calendar days before the regular meeting, no action may be taken on the item, and the item will be deferred.

Big picture reason for these additions: This provision makes it clear that if any missing documents are not posted and provided to the public at least 6 calendar days before the meeting, no action may be taken on the agenda item.

4. ~~Council~~ Policy body memoranda relating to any item on the agenda for a regular meeting may not be signed by ~~no~~ more than two ~~councilmembers~~ members of the policy body. Policy body memoranda must be posted on the City's public access website and available in the Office of the City Clerk, and made available for inspection and copying 3 calendar days before a regular meeting.
5. Notwithstanding Subdivision B(3) and B(4), policy bodies may accept staff reports and council memos submitted after the deadline when the conditions described in Section 2.4.010(C)(2) are met.
6. Documents related to an item on an agenda that are distributed by a member of the public ~~during discussion of the item~~ prior to or at a public meeting must be made available for public inspection immediately, or as soon thereafter as is practicable. ~~No~~ This subdivision does not apply to documents from a member or members of the policy body, City staff, or Council staff may be distributed any later than set forth in the preceding section.

Big picture reason for these changes: The public should also have the opportunity to distribute documents before a meeting, not just at the meeting.

7. Except for documents distributed by a member of the public to all or a majority of the members of a policy body in accordance with subdivision (6), no document pertaining to any item on the agenda of a policy body may be discussed, considered, or relied upon by any member of a policy body in discussing or taking action on any agenda item, if it has not been made available to the public in accordance with this section.

Big picture reason for above addition: This provision assures that public disclosure requirements for agenda packets will not be circumvented by

distribution of documents that are not included in the agenda packet. This will prevent the last-minute council memos that have been so common.

C. Council Action

1. The policy body may only discuss or take action on an item appearing on the posted agenda, except that members of a policy body may respond to statements or questions from members of the public at a meeting by asking a question for clarification, providing a referral to staff or other resources for factual information, or making a request of staff to report back to the policy body at a subsequent meeting concerning the matter raised by such testimony.
2. Notwithstanding subdivision (1), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:
 - a. Upon a determination by a majority vote of the policy body that an emergency situation exists. An emergency situation is either: (a) a work stoppage, crippling activity or other activity that severely impairs public health, safety or both; or (b) a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a policy body to provide one-hour notice before holding an emergency meeting under this section could endanger the public health, safety or both.
 - b. Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that: (a) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or that the item is a purely commendatory action; and (b) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in this Chapter.
 - c. The item was on an agenda posted pursuant to this Chapter for a prior meeting of the body occurring not more than ten calendar days prior to the date action is taken on the item and at the prior meeting the item was continued to the meeting at which action is being taken.

D. Special Meetings

1. A presiding officer of a policy body or a majority of members of a policy body may call a special meeting with ~~three~~ 10 calendar days notice, by delivering written notice to each member of the policy body, ~~and members of the media who have requested written notice of special meetings~~ providing notice to the public in accordance with Section 2.3.010(A), and distributing agenda packets, staff memoranda, public body memoranda, and other documents in accordance with Section 2.3.010(A).

Big picture reason for these changes: There is no reason that notice of “special” meetings cannot be provided in the same manner as for “regular” meetings. Special meetings are NOT used to address emergencies; emergencies are addressed in the “emergency meetings” section, added below. (This is the same mechanism used in the Brown Act.) Special meetings may occasionally be necessary, for instance to set a meeting for a date other than that on which the body normally meets, or to hold an extra meeting to address a particular issue. But unless notice and agenda requirements for such meetings are the same as for regular meetings, the City can evade the requirements for regular meetings by simply calling “special” meetings at which sensitive or controversial topics are addressed, with no more notice than is already required under the Brown Act.

2. The notice of special meeting may be delivered to each member of the policy body personally or by mail, email or facsimile and must specify the time and place of the special meeting and the business to be transacted. No other business will be considered at the special meeting.
3. Written notice may be dispensed with as to any member who at or before the time the meeting convenes files with the presiding officer or secretary of the policy body a written waiver of notice. ~~Written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.~~
4. Each special meeting must be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place, provided that the alternate location is specified in the notice of the special meeting and the notice of the special meeting of the policy body was given at least 10 calendar days before the special meeting. ~~This provision will not apply where the alternative meeting location is located within the same building as the regular meeting place and a notice is~~

~~posted at the announced meeting location specifying the new location.~~

E. Agenda Requirements

1. Agendas must identify the policy body conducting the meeting, specify the time and location of the meeting, contain a meaningful description of each item of business to be transacted or discussed at the meeting, and specify the proposed action for each item or state that the item is for discussion only. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be concise and written in plain, easily understood English, and must identify all documents that have been or will be provided to the policy body in connection with an agenda item.
2. Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

**KNOW YOUR RIGHTS UNDER THE OPEN
GOVERNMENT ORDINANCE**

(Title __ of the San Jose Municipal Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

**FOR MORE INFORMATION ON YOUR RIGHTS UNDER
THE OPEN GOVERNMENT ORDINANCE OR TO REPORT
A VIOLATION OF THE ORDINANCE, CONTACT THE
OPEN GOVERNMENT COMMISSION.**

2. Each agenda of a policy body covered by this Open Government Ordinance must include the address, area code and phone number, fax number, email address and contact person for the Open Government Commission and the Internet address of the City's public access Web site. Information on how to obtain a free copy of the Open Government Ordinance shall be included on each agenda.

2.3.020 Ancillary bodies

- A. As soon any meeting of an ancillary body is scheduled, and at least 3 days before a meeting, an ancillary body must post notice of a meeting on the City's public access website and master calendar as soon as the meeting is scheduled. Notice of meetings of ancillary bodies must be provided by mail, email or facsimile to each person who has made a written request for notice of such meetings. In addition, the time, place and nature of the meeting must be disclosed upon inquiry by a member of the public.
- B. Any agenda prepared for the meeting of an ancillary body must be posted on the City's public access website, and provided to any person who requests it, by mail, email or facsimile.
- C. Any agenda packet prepared for a meeting of an ancillary body must, to the extent feasible, be posted on the City's public access website, at the same time that the agenda for the meeting is posted.

2.4 Public Outreach Notice Requirements

2.4.010 Contents of Notice

Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or ~~that their neighborhood area shall~~ must be brief, concise and written in plain, easily-understood English. The notice ~~should~~ must inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity the location ~~of the Web page to~~ on the City's public access website at which related documents have been posted, and a telephone contact and email address for residents who have questions.

2.4.020 Notice of Right to Submit Comments

If the notice informs the public of a public meeting or hearing, then the notice ~~shall~~ must state that persons who ~~are unable to attend the public meeting or hearing~~ wish to do so may submit to the City, by the time the ~~proceeding~~ hearing or meeting begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice ~~should~~ must also state the name and address of the person or persons to whom those written comments should be submitted.

2.4.030 Right to Submit Comments

When notice is given as provided in this ~~ordinance~~ Section, ~~by public policy or advisory bodies,~~ members of the public may submit statements ~~and/or comments regarding any item on those bodies' the~~ the meeting agenda.

Those statements or comments shall become part of the public record, regardless of whether their authors are present when the item at issue is discussed. Statements or comments shall be subject to review and consideration by those bodies if submitted before or during the hearing on the item. Statements or comments received within ten business days after the hearing shall go on the public record with a notation as to when ~~it was~~ they were received.

2.5 Special Emergency Meetings

Emergency meetings of a policy body may be held in accordance with Government Code Section 54956.5.

Big picture reason for all these changes: The law cited above – Government Code Section 54956.5 – is the Brown Act. The Brown Act specifically says that if there is an emergency that is a threat to the public safety or welfare, meetings can be called as needed.

- A. ~~Special meetings of any local body may be called at any time by the presiding officer thereof or by a majority of the members thereof. All local bodies calling a special meeting shall provide notice by:~~
- ~~1. posting a copy of the agenda in a location freely accessible to the public at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda;~~
 - ~~2. filing a copy of the agenda and copies of all agenda-related material in the Office of the City Clerk at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda; and, delivering a copy of the agenda to each member of the local body, to each local newspaper of general circulation, to each agenda subscriber and to each media organization which has previously requested notice in writing, so that a copy of the agenda is received at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda. Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.~~
- B. ~~Policy bodies specified in Section 2.2 shall, in addition to the noticing requirements of this section, post a copy of the agenda for any special meeting on-line at the local body's website at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda. Failure to timely post a copy of the agenda online because of software or hardware failure shall not constitute a defect in the notice for a special meeting if the local body complies with all other posting and noticing requirements.~~

- ~~C. No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the local body except that the local body may designate an alternative meeting location provided that such alternative location is specified in the agenda and that notice pursuant to this Section is given at least ten (10) days prior to the special meeting. This ten (10) day notice requirement shall not apply if the alternative location is within the same building at which regular meetings of the local body occur.~~
- ~~D. To the extent practicable, the presiding officer or the majority of members of any local body may cancel a special meeting by delivering notice of cancellation in the same manner and to the same persons as required for the notice of such meeting.~~
- ~~E. Special meetings may not be noticed on the same day as a previously scheduled regular meeting that was not noticed in compliance with this ordinance if the special meeting is called to consider any of the items that were included in the notice for such regular meeting.~~

2.6 Barriers to Attendance Prohibited

2.6.010 Facilities

No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the City Council, a board or commission, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.

2.6.020 Comment

Each policy body that meets in City Hall and televises its meetings, shall provide for participation by members of the public via telephone "bridge lines" or Internet connections for public comment on each item in the same manner as if the member of the public were in actual physical attendance at the meeting. Each policy body subject to this provision may develop reasonable procedures for its implementation.

2.8 Recording and Photography

2.8.010 Public's Right to Record

Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

2.8.020 **Recording by Policy Body**

All policy bodies shall audio record each regular and special meeting. Each such audio recording and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.) and shall not be erased or destroyed. The audio and/or video record shall be kept indefinitely or as current technology allows. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City. Audio records of audio taped meetings shall be provided upon request and payment for the actual cost of the recording. Requests shall be made through the City Clerk.

2.9 Public Testimony and Written Statements

2.9.010 **Opportunity for Comment at Regular and Special Meetings**

Every agenda for a regular or special meetings ~~shall~~ must provide an opportunity for members of the public to directly address a policy body on any item, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section ____ of this chapter.

2.9.020 **Opportunity to Comment Before Action is Taken**

Every agenda for meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

2.9.030 **Time Limits**

Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once per item for ~~a maximum of~~ at least three minutes. Speakers addressing matters not on the agenda shall be permitted to be heard once for at least three minutes. More time should be permitted to the extent that the business of the policy body permits it. However, the ~~Chair presiding officer~~ of the meeting ~~has discretion to~~ may, if necessary, reduce the speaking time in situations where there are a large number of persons who wish to speak on a particular agenda item, and may expand the speaking time if the nature of the item or the public interest therein justifies it. Time limits shall be applied uniformly to members of the public

wishing to testify. The ~~Chair~~ presiding officer of the policy body shall accept public testimony in a fair and even-handed way, without manipulation in the order of speakers. Policy bodies may adopt rules allowing more time for each speaker than the minimum required by this section.

Big picture reason for this addition: This makes clear that those who want to speak are given at least three minutes to do so – very little time in which to address complex issues.

2.9.040 **No Abridgement of Criticism**

A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints ~~adopted in regulations pursuant to subdivision (c)~~ of imposed in accordance with this section.

2.9.050 **Changes to Agenda**

To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.

2.9.060 **Right to Submit Statements**

~~When notice is given, as provided in this ordinance, by public policy or advisory bodies, Members of the public may submit statements and/or comments regarding any item on those bodies' a meeting agendas~~ Those statements or comments shall become a part of the public record, regardless of whether their authors are present when the item at issue is discussed. Statements or comments shall be subject to review and consideration by those bodies if submitted before or during the hearing on the item. Statements or comments received within ten business days after the hearing shall go on the public record with a notation as to when it was received.

2.9.070 **Comment at Meetings of Ancillary Bodies**

~~Meetings of ancillary bodies need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.~~ E. If an ancillary body conducts a

meeting after issuing an agenda pursuant to this Chapter, the requirements of this Section shall apply to that meeting.

2.10 Minutes

2.10.010 Recording and Content of Minutes

The clerk or secretary of each policy body shall record the minutes for each regular and special meeting of the policy body. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

2.10.020 Draft Minutes

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille, increased type size or computer-readable file in a commonly used format.

2.11 Public Comment by Members of Policy Bodies

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of state or federal law or of this ordinance. The release of specific factual information ~~made required~~ to be kept confidential by state or federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both, unless the disclosure is made for the purpose of bringing the attention of the public or law enforcement officials to a violation of the law, or is made in

response to legal process, such as a court order, subpoena, or discovery request in litigation.⁷

2.12 Conflict Required Disclosures

2.12.010 Conflict of Interest

At the beginning of each City Council meeting or upon the arrival of the Mayor or Councilmember, the City Attorney shall ask the Mayor and each member of the City Council to disclose any financial or personal conflict with any item on the City Council's agenda. Pursuant to Government Code section _____, if the Mayor or a Councilmember discloses that such a personal financial interest is present, he or she shall publicly identify the conflict or potential conflict in detail sufficient to be understood by the public and shall recuse him or herself from taking action on the item if required to do so by law and leave the meeting room.

2.12.020 Material Information

Every member of a policy body, and every City official or employee appearing at a meeting of a policy body, has a duty to the policy body and the public to disclose information material to decisions by the policy body on matters under consideration at a meeting. Such information must, at a minimum, be disclosed at the meeting at which action is to be taken on the matter to which it pertains, before any action is taken on the matter. Such information should, to the extent possible, be disclosed in writing in the agenda packet for the meeting.

2.13 Senior Staff Meetings Open to Public

One senior City staff meeting per month shall be publicly noticed, made open and accessible to the public. Such meeting shall occur during regular business hours.

⁷ The limitation on disclosure of confidential information needs to be tempered by the recognition that public agencies sometime seek to suppress information about wrongdoing by threatening public officials or employees with legal action. Some provision must be made for "whistle-blowers." In addition, permitting disclosure pursuant to legal process is necessary in order to avoid conflicting legal duties.